IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 158 (S/B) of 2005

Chandra Pal Singh S/o Late Ram Lal,
Senior Lecturer, District Institute of Education & Training (DIET), Bhimtal, District Nainital

..... Petitioner

Versus

1. State of Uttarnahcal through Secretary Education, Govt. of Uttarnahcal, Secretariat, Dehradun
2. Director of Education, Uttaranchal, Dehradun

..... Respondents

Sri Sudhanshu Dhulia, Senior Advocate assisted by Sri Vipul Sharma, learned counsel for the petitioner.
Sri K.P. Upadhyaya, learned standing counsel for the respondents.

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: March 08, 2006

By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the impugned punishment order dated 14.07.2004 passed by Respondent No. 1, which is contained in Annexure No. 1 to this writ petition, whereby a penalty has been awarded to the petitioner and the petitioner has been reduced to a lower post (reverted) from the post of Senior Lecturer, District Institute of Education & Training to the post of Head Master, High School i.e. from the pay scale of Rs.8000-13500 to RS.7500-12000.

2. The petitioner has challenged the impugned order on the ground that on the same set of facts on which the chargesheet has been issued, a criminal chargseheet was submitted for committal and trial by the Magistrate concerned. The Magistrate concerned has

dealt with the entire evidence on record and had found that there was no material to establish the charges leveled against the petitioner and did not find the case to frame the charges and exonerated the petitioner from the charges. In support of his case, learned counsel for the petitioner relied upon the judgment of Hon'ble Apex Court in the case of *"Capt. Paul Anthony Vs. Bharat Gold Mines Ltd. and another {(1999) 3 Supreme Court Cases 679}"* and submitted that since the charges against the petitioner have not been established before the Trial Court in the criminal proceedings and he has been exonerated, therefore on the same set of facts the petitioner could not have been punished by the impugned order. On the other hand, learned standing counsel Sri K.P. Upadhyaya relied on the subsequent judgment of the Hon'ble Apex Court in the case of *"South Bengal Transport Corporation Vs. Swapan Kumar Mitra, 2006 AIR SCW, 768"*, wherein the Apex Court has upheld the removal order though the petitioner was exonerated in the criminal case.

3. The Apex Court in para-3 of **South Bengal Transport Corpn.** (Supra) has noted that so far as the criminal case is concerned, it ended in acquittal of respondent on the ground that sufficient evidence was not available to the court to come to the conclusion of guilt of Respondent No. 1.

4. The Hon'ble Supreme Court has proceeded on the aforesaid fact that there was no sufficient evidence on record while in the Paul Anthony's case, the Apex Court has held that if the dismissal order and order of acquittal is based on the same set of facts, the dismissal order is liable to be quashed. Here in the present case, the criminal proceedings as well as the department

proceedings are on the same set of facts. In the criminal proceedings, no charge has been found to be established therefore, no charge could be framed against the petitioner.

5. Thus, the petitioner cannot be punished in the departmental inquiry on the same set of facts in view of the ratio of the Hon'ble Apex Court in **Paul Anthony's case (Supra**). Therefore, the impugned order dated 14.07.2005 is accordingly quashed. The writ petition is allowed. No order as to costs.

(B.C.Kandpal, J.) **(P.C.Verma,J.)**

Rajeev Dang